No. 83-712

In the Supreme Court of the United States

OCTOBER TERM, 1984

STATE OF NEW JERSEY, PETITIONER

v.

T.L.O.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING REVERSAL

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QUESTION PRESENTED

The United States will address the question put to the parties in the Court's order of July 5, 1984:

Whether the assistant vice principal violated the Fourth Amendment in opening respondent's purse in the facts and circumstances of this case.

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INTEREST OF THE UNITED STATES

This case raises important questions concerning the measures public school officials may take to maintain the order and discipline essential to their educative mission. While education is primarily the responsibility of state and local governments, the federal government provides substantial amounts of money to support programs in public schools. See, *e.g.*, Education Amendments of 1978, 20 U.S.C. 2701 *et seq.*; Dep't of Education Organization Act, 20 U.S.C. 3401 *et seq.* Those expenditures will be more fruitful to the extent that the recipient schools are able to maintain an effective educational environment. Accordingly, as part of its overall program to improve the quality of education, the federal government has devoted considerable attention to the problem of school discipline. Among other things, the Departments of Education and Justice have established the National School Safety Center, the primary mission of which is the collection and dissemination of data on school safety and crime prevention techniques and legal

information regarding school discipline. The Department of Education also is working to combat school crime by evaluating activities currently underway in local school districts and identifying measures that can be employed by local jurisdictions to reduce school crime and disorder.

The growing lack of discipline and disorder in the public schools is a national problem, the solution to which entails a commitment from the United States to help parents and state and local education officials. The disposition of this case undoubtedly will have a substantial impact on the federal government's initiatives in this area.

STATEMENT

1. On the morning of March 7, 1980, a mathematics teacher at Piscataway High School entered the girls' restroom and found respondent and another girl, Miss Johnson, holding what the teacher thought to be lighted cigarettes (Pet. App. 2a; 9/26/80 Tr. 20). School regulations prohibited smoking in the restrooms, and the teacher accordingly took the two girls to the principal's office (Pet. App. 2a). There, the girls met with Theodore Choplick, the assistant vice principal (9/26/80 Tr. 22, 27).

Mr. Choplick asked the girls whether they had in fact been smoking. Miss Johnson admitted that she had been smoking, and Mr. Choplick disciplined her by assigning her to a three-day smoking clinic. Pet. App. 2a. Respondent not only denied smoking in the restroom, but in addition claimed that she did not smoke at all (*ibid.*). To resolve the credibility dispute, Mr. Choplick asked respondent to accompany him to a private office (*ibid.*).

Inside the office, Mr. Choplick asked to see respondent's purse, and she gave it to him. When Mr. Choplick opened the purse, a package of Marlboro cigarettes was immediately visible. Mr. Choplick held up the Marlboros and said to respondent, "[y]ou lied to me." Pet. App. 2a.

As he reached into respondent's purse for the cigarettes, Mr. Choplick saw in plain view a package of rolling papers (Pet. App. 2a); respondent denied that the rolling papers belonged to her (9/26/80 Tr. 28-29). Based on his experience, Mr. Choplick believed that the presence of rolling papers indicated some connection to marijuana smoking. Accordingly, Mr. Choplick looked further into respondent's purse and found marijuana, additional drug paraphernalia, written documentation of respondent's sale of marijuana to other students, and a significant amount of cash ($40) for a 14-year-old to be carrying. Mr. Choplick then called respondent's mother and notified the police. Pet. App. 2a.

Respondent's mother agreed to a police request to bring her daughter to police headquarters for questioning. At the station house, respondent was advised of her *Miranda* rights in her mother's presence and signed a waiver of those rights. An officer then questioned respondent in her mother's presence. Respondent admitted that the objects found in her purse belonged to her, and she further admitted that she had been selling marijuana at school, receiving $1.00 per "joint." She stated that she had sold between 18 and 20 joints at school that morning before the smoking incident. Pet. App. 2a, 28a.

Respondent was suspended from school for three days for smoking cigarettes and for seven days for possession of marijuana. She challenged the suspension in court, alleging that the search of her purse had violated the Fourth Amendment. The court upheld the three-day suspension for smoking cigarettes but vacated the seven-day suspension for possession of marijuana on the ground that the search that revealed the marijuana had been conducted in violation of the Fourth Amendment. Pet. App. 2a-3a nn.1 & 2; 27a.[1]

The state charged respondent with delinquency, based on possession of marijuana with the intent to distribute it, in violation of N.J. Stat. Ann. §§ 24:21-19(a)(1) and 24:21-20(a)(4) (West. Supp. 1984). Respondent moved to suppress the evidence seized from her purse,

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[1] Respondent's challenge to her suspension from school is not at issue in this case.

as well as her confession, contending that the allegedly illegal search tainted the confession. Pet. App. 2a.

2. On September 26, 1980, the state trial court denied respondent's motion to suppress the evidence taken from her purse. Pet. App. 27a-37a. Respondent was then tried, found guilty, and adjudicated a delinquent. She was sentenced to probation for one year with the special conditions that she observe a reasonable curfew, attend school regularly, and successfully complete a counseling and drug therapy program.

Respondent appealed to the Superior Court of New Jersey, Appellate Division. That court affirmed the denial of her motion to suppress, but it remanded the case to the trial court to determine whether respondent had made a valid waiver of her *Miranda* rights. Pet. App. 22a.

Respondent appealed the denial of her motion to suppress to the Supreme Court of New Jersey. That court held that school officials may conduct warrantless administrative searches on school premises if they have reasonable grounds to believe that a student possesses evidence of illegal activity or activity that would interfere with school discipline and order. In this case, however, the court held that Mr. Choplick lacked reasonable grounds to search respondent's purse. Concluding that the exclusionary rule applies to searches and seizures of students in public schools, the state supreme court suppressed the evidence seized from respondent's purse. Pet. App. 1a-14a. Two justices dissented, believing that Mr. Choplick had reasonable grounds for the search in this case. *Id.* at 14a-21a.

SUMMARY OF ARGUMENT

I. Although we submit that it misapplied the law to the facts of this case, we agree with the Supreme Court of New Jersey (Pet. App. 9a-11a) that the Fourth Amendment does not require school officials to have probable cause and a warrant to search for evidence of a school infraction. The "overarching principle • • • embodied in the Fourth Amendment" is one of "'reasonableness.'" *United States* v. *Villamonte-Marquez*, No. 81-1350 (June 17, 1983), slip op. 9. Moreover, "reasonableness" depends on the context in which a particular search or seizure occurs. See *Wyman* v. *James*, 400 U.S. 309, 318 (1971); *Terry* v. *Ohio*, 392 U.S. 1, 9 (1968). Probable cause and a warrant, though frequently required, are not absolutes. The Court has held that the warrant requirement is inapplicable in certain circumstances, and "reasonable suspicion," in lieu of probable cause, is all that is required in many instances.

Focusing on context, the Court has developed special rules for border searches, civil or administrative searches, and searches conducted in furtherance of "community caretaking" functions. These cases establish that a search or seizure may be "reasonable" within the meaning of the Fourth Amendment even if probable cause is lacking. In addition, the cases establish that the probable cause standard "is peculiarly related to criminal investigations" (*South Dakota* v. *Opperman*, 428 U.S. 364, 370 n.5 (1976)). Moreover, the mere fact that a search held reasonable on less than probable cause produces evidence that is subsequently used in criminal proceedings does not alter the requisite level of suspicion (*id.* at 370-375). Finally, the pertinent cases demonstrate that the reasonableness of particular classes of searches or seizures generally is determined on a categorical basis rather than a case-by-case approach. Here, a number of unique factors call for the placement of school searches in a special category, with the result that school officials seeking to enforce school rules and regulations need not demonstrate probable cause in order to satisfy the Fourth Amendment's standard of reasonableness.

II. A. While "students [do not] shed their constitutional rights • • • at the schoolhouse gate" (*Tinker* v. *Des Moines Independent Community School Dist.*, 393 U.S. 503, 506 (1969)), the Court nevertheless has often recognized the unique nature of children and the school

setting and has declined to "constitutionalize" the entire educational process. For example, in *Ingraham* v. *Wright*, 430 U.S. 651 (1977), the Court, in rejecting the applicability of the Eighth Amendment to corporal punishment administered as a method of disciplining public school students, endorsed the common law notion that "the State • • • may impose such corporal punishment as is reasonably necessary 'for the proper education of the child and for the maintenance of group discipline.'" *Id.* at 662 (quoting 1 F. Harper & F. James, *Law of Torts* § 3.20, at 292 (1956)). So too, in *Goss* v. *Lopez*, 419 U.S. 565 (1975), the Court's holding that due process requires notice and a hearing before a child may be suspended from school was tempered by the recognition that the "hearing" could be quite "rudimentary," amounting to no more than "the disciplinarian • • • informally discuss[ing] the alleged misconduct with the student minutes after it has occurred" (*id.* at 581-582). The Court concluded that more formal requirements would be counterproductive and could destroy the effectiveness of suspensions "as part of the teaching process" (*id.* at 583). As in *Ingraham* and *Goss*, both history and common sense argue persuasively against imposing rigid requirements derived from criminal proceedings on public school administrators charged with maintaining order in the schools and an atmosphere conducive to learning.

B. 1. The Court has on several occasions relied on "longstanding, historically recognized" practices to uphold particular types of searches on less than probable cause. *United States* v. *Ramsey*, 431 U.S. 606, 621 (1977). See also, *e.g.*, *Villamonte-Marquez*, slip op. 6-8; *United States* v. *Biswell*, 406 U.S. 311, 314 (1972). The authority of school officials to supervise their students free of the full panoply of legal constraints imposed upon the actions of other state officials was established in colonial times, and it has been exercised virtually unquestioned for over 200 years. This historical practice has its origins in the common law doctrine that

teachers act *in loco parentis*, exercising authority delegated from the parent. See 1 W. Blackstone, *Commentaries* *453. Relying in part on this longstanding tradition, state and lower federal courts have overwhelmingly approved the actions of school officials in cases such as this one.

2. Although the pure, Blackstonian version of the *in loco parentis* doctrine may not be fully applicable to a system of compulsory education, the doctrine serves well as the backdrop for analysis in this case. Even in the absence of formal delegation from parents, teachers have been given responsibilities *like* those of parents, and they must be afforded concomitant leeway to exercise those responsibilities in a manner that best effectuates their educative mission.

While teachers are far more than "caretakers," their responsibility for student welfare makes searches on the basis of less than probable cause reasonable; school officials are responsible not only for teaching students but for preserving order and discipline in the interests of the entire student body. Sadly, disorder and crime in the public schools have reached epidemic proportions. See pages 22-23, *infra*. Many schools today are in such a state of disorder that the very safety of students and teachers is imperiled. School searches—conducted in a prompt and informal way—are a vital means of protecting students and teachers from weapons and drugs and enforcing school disciplinary rules.

In addition to maintaining order for safety's sake, teachers must be able to teach. Many educators attribute the decline in educational achievement in this country to the lack of effective discipline. See pages 23-24, *infra*. In the secondary school setting, however, "discipline" meted out according to the formal procedures of the criminal justice system would likely be destructive of the special relationship between students and teachers so necessary for successful teaching. Teachers and school administrators need the freedom to deal with incidents of student misbehavior in prompt and informal ways

that teach the moral value and necessity of adherence to society's rules without elevating every misdeed to the level of an adversarial confrontation.

The political process provides significant protection against abuses by school officials of their authority. A large and highly motivated segment of the public—parents with school-age children—is immediately aware of abuses and, acting through locally-elected school boards, can hold teachers and administrators accountable. See *Ingraham* v. *Wright*, 430 U.S. at 670. The availability of this effective political supervision counsels strongly against judicial imposition of rigid requirements on school officials attempting to perform the mission with which society has entrusted them.

III. The assistant vice principal in this case was, beyond question, aware of "specific articulable facts, together with rational inferences from those facts, that reasonably warrant[ed] suspicion" that respondent had violated a school rule. *United States* v. *Brignoni-Ponce*, 422 U.S. 873, 884 (1975). Mr. Choplick had received an eyewitness report from an unquestionably credible source that respondent had violated a school regulation by smoking in the restroom. Respondent's denial, and her claim that she was a nonsmoker, were hardly sufficient, without more, to overcome the reasonable suspicion generated by the teacher's report. Opening respondent's purse to determine whether its contents might reveal the truth of the matter was surely reasonable under the circumstances. In holding that the mere possession of cigarettes was irrelevant to the alleged infraction (Pet. App. 12a), the Supreme Court of New Jersey appears to have revived the "mere evidence" rule rejected by this Court in *Warden* v. *Hayden*, 387 U.S. 294, 300-310 (1967). Under *Hayden*, the controlling question is whether the possession of cigarettes would aid in establishing a violation of the prohibition against smoking in the restrooms. *Id.* at 307. The answer to that question is clearly affirmative.

The New Jersey court also erred in its suggestion (Pet. App. 12a) that even if it was reasonable for Mr. Choplick to open respondent's purse, he should not have searched her entire purse. But once the Marlboros had been removed, and the rolling papers were in plain view, Mr. Choplick had probable cause (not merely reasonable suspicion) to believe that respondent possessed marijuana, and he was then justified in searching her entire purse for evidence of drug dealing. Compartmentalization of the search of the purse was no more required or feasible than is compartmentalization of the search of an automobile. See *United States* v. *Ross*, 456 U.S. 798, 820-821 (1982). Accordingly, the judgment below, suppressing the evidence discovered in respondent's purse, should be reversed.

ARGUMENT

THE ASSISTANT VICE PRINCIPAL'S SEARCH OF RESPONDENT'S PURSE DID NOT VIOLATE THE FOURTH AMENDMENT

I. The Level Of Suspicion Required For Particular Categories Of Searches Depends Upon The Context In Which The Search Is Undertaken

A. The Supreme Court of New Jersey held (Pet. App. 9a-11a) that the Fourth Amendment does not require school officials to have probable cause and a warrant to search for evidence of a school infraction, and we agree. "[T]he overarching principle • • • embodied in the Fourth Amendment" is one of "'reasonableness.'" *United States* v. *Villamonte-Marquez*, No. 81-1350 (June 17, 1983), slip op. 9. The Fourth Amendment "does not denounce all searches or seizures, but only such as are unreasonable." *Carroll* v. *United States*, 267 U.S. 132, 147 (1925).[2] Because "[t]he test of reasonableness un-

[2] See also *United States* v. *Place*, No. 81-1617 (June 20, 1983), slip op. 6, 10; *Michigan* v. *Summers*, 452 U.S. 692, 699-700 (1981); *Donovan* v. *Dewey*, 452 U.S. 594, 599 (1981); *Bell* v. *Wolfish*, 441 U.S. 520, 558 (1979); *Delaware* v. *Prouse*, 440 U.S. 648, 654 (1979); *Pennsylvania* v. *Mimms*, 434 U.S. 106, 108-109 (1977); *Cady* v. *Dombrowski*, 413 U.S. 433, 439, 448 (1973); *Wyman* v. *James*, 400 U.S. 309, 318 (1971); *Camara* v. *Municipal Court*, 387 U.S. 523, 539 (1967); *Cooper* v. *California*, 386 U.S. 58, 62 (1967).

der the Fourth Amendment is not capable of precise definition or mechanical application," *Bell* v. *Wolfish*, 441 U.S. 520, 559 (1979), " 'the specific content and incidents of th[e] right [to be free from unreasonable searches and seizures] must be shaped by the context in which it is asserted.' " *Wyman* v. *James*, 400 U.S. 309, 318 (1971) (quoting *Terry* v. *Ohio*, 392 U.S. 1, 9 (1968)).[3]

A necessary corollary of the focus on context has been the development of different standards of reasonableness under the Fourth Amendment for different types of searches and seizures. In the typical case of law enforcement officers investigating criminal acts, for example, the Court generally has required both probable cause and a warrant. See, *e.g.*, *United States* v. *United States District Court*, 407 U.S. 297, 317 (1972). In other contexts, however, the Court has lowered the threshold of suspicion required for a lawful search or seizure from probable cause to "reasonable suspicion." The most well-known example, of course, is the "stop and frisk" procedure approved in *Terry* v. *Ohio*, *supra*. See also *Pennsylvania* v. *Mimms*, 434 U.S. 106 (1977). But *Terry* has not been limited to its facts; the Court has permitted searches and seizures on the basis of reasonable suspicion in other circumstances as well. See, *e.g.*, *Michigan* v. *Long*, No. 82-256 (July 6, 1983) (search of passenger compartment of car during investigatory stop); *Michi-*

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[3] See also *Villamonte-Marquez*, slip op. 9, 13-14; *Bell* v. *Wolfish*, 441 U.S. at 559; *United States* v. *Ramsey*, 431 U.S. 606, 616 (1977); *United States* v. *Martinez-Fuerte*, 428 U.S. 543, 551, 555-556, 561 (1976); *South Dakota* v. *Opperman*, 428 U.S. 364, 375 (1976); *Terry* v. *Ohio*, 392 U.S. at 9, 27; *Camara* v. *Municipal Court*, 387 U.S. 523, 534-540 (1967); *Cooper* v. *California*, 386 U.S. 58, 59 (1967); 3 W. LaFave, *Search and Seizure* § 9.1 (1978 & Supp. 1984); Amsterdam, *Perspectives on the Fourth Amendment*, 58 Minn. L. Rev. 349, 395 (1974); Buss, *The Fourth Amendment and Searches of Students in Public Schools*, 59 Iowa L. Rev. 739, 753-754 (1974); LaFave, *Administrative Searches and the Fourth Amendment: The Camera and See Cases*, 1967 Sup. Ct. Rev. 1, 20.

gan v. *Summers*, 452 U.S. 692 (1981) (seizure of individual outside premises while executing warrant).

Border searches are a special area in which the Court, under the touchstone of the reasonableness standard, has looked to context to determine the requirements of a lawful search or seizure and concluded that the traditional standard of probable cause and a warrant is generally inappropriate. In *United States* v. *Brignoni-Ponce*, 422 U.S. 873 (1975), the Court, while prohibiting stops based solely on the appearance of Mexican ancestry, upheld the authority of the Border Patrol to stop a vehicle and question its occupants if the agents possess reasonable suspicion that the vehicle may contain illegal aliens. But cf. *Almeida-Sanchez* v. *United States*, 413 U.S. 266 (1973) (full search of automobile requires probable cause and a warrant). In *United States* v. *Ramsey*, 431 U.S. 606 (1977), the reasonable suspicion standard for border searches was held to encompass the inspection of packages mailed from abroad. And in *United States* v. *Martinez-Fuerte*, 428 U.S. 543 (1976), the Court held that the Border Patrol may stop an automobile and briefly question its occupants at a permanent checkpoint near the border even in the absence of individualized suspicion that the vehicle contains illegal aliens.

The Court's treatment of searches and seizures of a civil or administrative nature is especially pertinent to the search in this case, since such searches generally are conducted in order to maintain discipline or to enforce observance of rules and regulations. In *Camara* v. *Municipal Court*, 387 U.S. 523 (1967), and *See* v. *City of Seattle*, 387 U.S. 541 (1967), the Court held that both probable cause and a warrant are required before safety inspectors can inspect homes or commercial premises. Nevertheless, the Court significantly altered the standard for what constitutes probable cause in order to adjust the protections of the Fourth Amendment to the unique aspects of the context. See *Camara*, 387 U.S. at 534-539.

Subsequent administrative search cases have brought additional developments. Entry to inspect the premises

with neither a warrant nor *any* particularized suspicion is permitted pursuant to a legislative scheme for pervasively regulated industries. See *Donovan* v. *Dewey*, 452 U.S. 594 (1981) (inspection of mines); *United States* v. *Biswell*, 406 U.S. 311 (1972) (gun dealers); *Colonnade Catering Corp.* v. *United States*, 397 U.S. 72 (1970) (alcohol dealers). But cf. *Marshall* v. *Barlow's, Inc.*, 436 U.S. 307 (1978) (warrant required when obtaining one is not detrimental to enforcement of the regulatory scheme). Similarly, neither a warrant nor any individualized suspicion is required for the Coast Guard or Customs Service to board a vessel and examine its owner's documents, *United States* v. *Villamonte-Marquez*, *supra*; for police officers to inventory the contents of objects they have impounded. *Illinois* v. *Lafayette*, No. 81-1859 (June 20, 1983); *South Dakota* v. *Opperman*, 428 U.S. 364 (1976); for law enforcement officers to perform various "community caretaking" functions that include searches or seizures, *Cady* v. *Dombrowski*, 413 U.S. 433 (1973) (policemen searched car for service revolver of off-duty officer); *Harris* v. *United States*, 390 U.S. 234 (1968) (police officer discovered evidence while locking car); or for a caseworker to enter the home of a welfare recipient to ensure compliance with welfare regulations, *Wyman* v. *James*, 400 U.S. 309 (1971).

The "community caretaking" rationale also has been applied, at least in part, to the activities of firefighters. In *Michigan* v. *Tyler*, 436 U.S. 499 (1978), the Court held that a burning building creates an exigency that justifies a warrantless entry to fight the blaze, and that once in the building, officials need no warrant to remain for "a reasonable time to investigate the cause of a blaze after it has been extinguished." *Id.* at 510. Entries at a later time with the primary object of investigating the cause and origin of the fire may be made pursuant to the procedures established in *Camara* for administrative searches. *Tyler*, 436 U.S. at 511; *Michigan* v. *Clifford*, No. 82-357 (Jan. 11, 1984), slip op. 6. If, however, the primary object of a subsequent search

is to gather evidence of criminal activity such as arson, a criminal search warrant must be obtained. *Clifford*, slip op. 4, 6.

B. These decisions point the way to several important conclusions about the Fourth Amendment. First, many searches and seizures are "reasonable" within the meaning of the Fourth Amendment even if probable cause is lacking. No single standard represents "reasonableness" as that term is used in the Fourth Amendment; "the Fourth Amendment imposes no irreducible requirement of such suspicion." *Martinez-Fuerte*, 428 U.S. at 561.[4] Rather, as the Court has long recognized, "[t]hese cases together establish that in appropriate circumstances the Fourth Amendment allows a properly limited 'search' or 'seizure' on facts that do not constitute probable cause * * *." *Brignoni-Ponce*, 422 U.S. at 881.

Second, "[t]he standard of probable cause is peculiarly related to criminal investigations, not routine, noncriminal procedures." *Opperman*, 428 U.S. at 370 n.5; see also *Ingraham* v. *Wright*, 430 U.S. 651, 673 n.42 (1977) (principal concern of Fourth Amendment is intrusions on privacy in course of criminal investigations); *Whalen* v. *Roe*, 429 U.S. 589, 604 n.32 (1977) (same); Note, *Warrantless Searches and Seizures of Automobiles*, 87 Harv. L. Rev. 835, 850-851 (1974). Consequently, the Court has not hesitated to uphold searches upon less than probable cause when the context requires alteration of the accommodation between individual and governmental interests reached in the criminal cases establishing the probable cause standard. Moreover, the mere fact that a search held reasonable on less than probable cause produces evidence that is subsequently used in criminal proceedings does not alter the requisite level of suspicion. See *Opperman*, 428 U.S. at 370-375; *Cady* v. *Dombrow-*

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[4] See also *Michigan* v. *Summers*, 452 U.S. at 699-700 & nn.11-12; *Brown* v. *Texas*, 443 U.S. 47, 51 (1979); *Dunaway* v. *New York*, 442 U.S. 200, 210 (1979); *Delaware* v. *Prouse*, 440 U.S. 648, 654 (1979).

ski, *supra*; *Harris* v. *United States*, *supra*; *Abel* v. *United States*, 362 U.S. 217, 228-230 (1960).

Third, the balancing of individual and governmental interests to determine the reasonableness of a search or seizure under the Fourth Amendment is performed not as "a matter for case-by-case application, but rather as a technique for establishing the quantum of evidence needed for certain distinct kinds of official action." 3 W. LaFave, *Search and Seizure* § 9.1, at 14 (1978). The Court isolates the unique features of particular *categories* of searches, such as car searches, see *United States* v. *Ross*, 456 U.S. 798 (1982); *Chambers* v. *Maroney*, 399 U.S. 42 (1970); or searches by health inspectors, see *Camara* v. *Municipal Court*, *supra*, and prescribes the test of reasonableness for searches in that context. As we demonstrate below, a number of unique factors call for the placement of school searches in a special category, with the result that school officials seeking to enforce school rules and regulations need not demonstrate probable cause to satisfy the Fourth Amendment's standard of reasonableness.[5]

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[5] Because we argue that probable cause is not necessary to justify a search by a school administrator such as the one in this case, we shall not separately address the issue whether a warrant should be required. The language of the Fourth Amendment is quite clear that "no Warrants shall issue, but upon probable cause * * *." U.S. Const. Amend. IV. Thus, if a search is permitted on the basis of suspicion short of probable cause, no warrant can be required. See *Opperman*, 428 U.S. at 370 n.5. And even if the Court were to hold that probable cause is necessary for a school official to conduct a search in connection with school discipline, it still would not follow that a warrant should be required. The Court has created numerous exceptions to the warrant requirement. See, *e.g.*, *United States* v. *Ross*, *supra* (automobile searches); *Vale* v. *Louisiana*, 399 U.S. 30 (1970) (exigent circumstances); *Chimel* v. *California*, 395 U.S. 752 (1969) (search incident to arrest). In general, these exceptions follow the principle that probable cause is sufficient protection when obtaining a warrant would be unduly complicated or difficult. See *Chambers* v. *Maroney*, 399 U.S. at 51; 2 W. LaFave, *Search and Seizure* § 4.1 (1978 & Supp. 1984). In addition, the warrant requirement may be waived when there is less necessity for a "neutral and detached magistrate" because the officials conducting the search are not "engaged in the often competitive enterprise of ferreting out crime." *Johnson* v. *United States*, 333 U.S. 10, 14 (1948) (footnote omitted). Even respondent concedes that the warrant requirement should be waived in the school context because it "would be particularly difficult for schools to comply with because * * * schools are not primarily involved in investigating criminal conduct." Tr. of Oral Arg. 32 (Mar. 28, 1984).

II. A School Official Having Reasonable Suspicion That A Student Has Violated A School Rule May Conduct A Warrantless Search Of The Student's Effects[6]

A. It is beyond dispute that "students [do not] shed their constitutional rights * * * at the schoolhouse gate." *Tinker* v. *Des Moines Independent Community School Dist.*, 393 U.S. 503, 506 (1969). At the same time, however, this Court has recognized the unique nature of children and the school setting and has declined to "constitutionalize" the entire educational process.[7] For

[6] We deal here with school searches of the type conducted in this case. Since it is clear, as we demonstrate in Part III of this brief, that the search of respondent's purse was supported by reasonable suspicion, it is unnecessary to consider the circumstances in which a lesser degree of suspicion might be constitutionally permissible. Such circumstances are easily imaginable, however, as, for example, in the case of a rumor that a student possessed a knife and intended to harm a teacher or another student.

[7] The Court has recognized the self-evident proposition that children are different from adults outside of the school setting as well. In *Ginsberg* v. *New York*, 390 U.S. 629 (1968), the Court upheld a New York statute making it unlawful to sell obscene material to minors. As the Court observed (*id.* at 638 (quoting *Prince* v. *Massachusetts*, 321 U.S. 158, 170 (1944)), "even where there is an invasion of protected freedoms, 'the power of the state to control the conduct of children reaches beyond the scope of its authority over adults.'" The Court endorsed the view that "'regulations of communication addressed to [children] need not conform to the requirements of the first amendment in the same way as those applicable to adults'" (*Ginsberg*, 390 U.S. at 638 n.6 (quoting Emerson, *Toward a General Theory of the First Amendment*, 72 Yale L.J. 877, 939 (1963)).

Similarly, in rejecting a due process challenge to a New York statute authorizing pretrial detention of juveniles, the Court recently stressed the fundamental differences between children and

example, in *Ingraham* v. *Wright*, 430 U.S. 651 (1977), the Court held that the Eighth Amendment's proscription against cruel and unusual punishments does not extend to the imposition of corporal punishment as a method of disciplining public school students. Instead, the Court accepted the common law notion that "the State * * * may impose such corporal punishment as is reasonably necessary 'for the proper education of the child and for the maintenance of group discipline.'" *Id.* at 662 (quoting 1 F. Harper & F. James, *Law of Torts* § 3.20, at 292 (1956)).

So too, in *Goss* v. *Lopez*, 419 U.S. 565 (1975), the Court's holding that due process requires notice and a hearing before a child may be suspended from school was tempered by the recognition that the "hearing" could be quite "rudimentary" and could follow immediately the giving of "notice" (*id.* at 581-582). Indeed, the Court held that due process would be satisfied "[i]n the great majority of cases" simply by having "the disciplinarian * * * informally discuss the alleged misconduct with the student minutes after it has occurred" (*id.* at 582); the Court's only concern was that the accused student be "given an opportunity to explain his version of the facts" after first being apprised of the basis of

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adults. The Court explained (*Schall* v. *Martin*, No. 82-1248 (June 4, 1984), slip op. 9 (citations omitted)):

> We have held that certain basic constitutional protections enjoyed by adults accused of crimes also apply to juveniles. * * * But the Constitution does not mandate elimination of all differences in the treatment of juveniles. * * * The State has "a *parens patriae* interest in preserving and promoting the welfare of the child," *Santosky* v. *Kramer*, 455 U.S. 745, 766 (1982), which makes a juvenile proceeding fundamentally different from an adult criminal trial. We have tried, therefore, to strike a balance—to respect the "informality" and "flexibility" that characterize juvenile proceedings, *In re Winship*, [397 U.S. 358, 366 (1970)], and yet to ensure that such proceedings comport with the "fundamental fairness" demanded by the Due Process Clause.

the accusation (*ibid.*). But the Court was unwilling to impose more onerous requirements on school authorities (*id.* at 583):

> We stop short of construing the Due Process Clause to require, countrywide, that hearings in connection with short suspensions must afford the student the opportunity to secure counsel, to confront and cross-examine witnesses supporting the charge, or to call his own witnesses to verify his version of the incident. Brief disciplinary suspensions are almost countless. To impose in each such case even truncated trial-type procedures might well overwhelm administrative facilities in many places and, by diverting resources, cost more than it would save in educational effectiveness. Moreover, further formalizing the suspension process and escalating its formality and adversary nature may not only make it too costly as a regular disciplinary tool but also destroy its effectiveness as part of the teaching process.

In short, the Court has made it clear—both within the school context and without—that the panoply of constitutional protections guaranteed to adults cannot and should not be transplanted wholesale to children. As we demonstrate below, both history and common sense compel this conclusion in the context of school searches.

B. 1. On several occasions, "longstanding, historically recognized" practices have led the Court to uphold particular types of searches on less than probable cause. *United States* v. *Ramsey*, 431 U.S. at 621 (border searches). See also, *e.g.*, *Villamonte-Marquez*, slip op. 6-8 (authority to board ships and inspect owners' documentation); *United States* v. *Biswell*, 406 U.S. at 314 (inspection of liquor dealer approved on the basis of "the historically broad authority of the Government to regulate the liquor industry"). The authority of school officials to supervise their students free of the full panoply of legal constraints imposed upon the actions of other state officials constitutes such a longstanding, historically recognized practice. That authority was established in

colonial times, and it has been exercised virtually unquestioned for over 200 years.[8] See Ladd, "Regulating Student Behavior Without Ending Up In Court," *reprinted in* National Education Association, *Discipline and Learning: An Inquiry into Student-Teacher Relationships* 24, 25-28, 30 (1977); H. Falk, *Corporal Punishment* (1941); Proehl, *Tort Liability of Teachers*, 12 Vand. L. Rev. 723, 726-727 (1959). See generally, M. Katz, *Education in American History* (1973); J. Pulliam, *History of Education in America* (1968).

This historically unbroken practice has its origins in the common law doctrine that teachers act *in loco parentis*. Proehl, *supra*, 12 Vand. L. Rev. at 723; 1 W. Ringel, *Searches & Seizures, Arrests and Confessions* § 17.2 (2d ed. 1984). Blackstone explained the meaning of the theory in 1769 (1 W. Blackstone, *Commentaries* *453):

> [The father] may also delegate part of his parental authority, during his life, to the tutor or schoolmaster, of his child; who is then *in loco parentis*, and has such a portion of the power of the parent committed to his charge, *viz.* that of restraint and correction, as may be necessary to answer the purposes for which he is employed.

The pure, Blackstonian version of the *in loco parentis* doctrine may no longer govern student/teacher relations in public schools. See pages 20-21, *infra*. Nonetheless, Blackstone's version of the doctrine remains the foundation for the contemporary notion that teachers must be left relatively free from rigid legal constraints to discipline students and enforce order in the schools.

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[8] This Court has previously held that "'[t]he Fourth Amendment is to be construed in the light of what was deemed an unreasonable search and seizure when it was adopted * * *.'" *Ramsey*, 431 U.S. at 619 n.14 (quoting *Carroll* v. *United States*, 267 U.S. at 149). See also *Villamonte-Marquez*, slip op. 6-8 (quoting *Boyd* v. *United States*, 116 U.S. 616, 623 (1886)). It is extremely unlikely that the Framers of the Fourth Amendment ever intended the Amendment to serve as a Code of School Disciplinary Rules.

With specific regard to the issue of searches, it was not until 1969 that anyone appears to have raised the claim that the Fourth Amendment limited school officials in their actions at all.[9] Commenting on the recent spate of litigation brought by students to challenge ordinary disciplinary practices, one educator remarked: "[T]he new situation it has created goes strongly counter to a tradition which is basic to American public school administration and threatens what most conscientious administrators have always been taught to believe is good professional practice." Ladd, "Regulating Student Behavior," *supra*, at 25. In recognition of this fact, state and lower federal courts have overwhelmingly approved the actions of school officials in cases like this one. See Buss, *The Fourth Amendment and Searches of Students in Public Schools*, 59 Iowa L. Rev. 739 & n.1 (1974) (citing cases); Comment, *Students and the Fourth Amendment: "The Torturable Class,"* 16 U.C. Davis L. Rev. 709, 709-710 & n.4 (1983) (citing cases). The nature of the school setting, discussed below, requires continued adherence to this long-standing tradition.

2. A reduced level of suspicion is reasonable within the meaning of the Fourth Amendment when the search is "not one by police or uniformed authority" and is "not a criminal investigation." *Wyman* v. *James*, 400 U.S. at 322-323; see also *Ingraham* v. *Wright*, 430 U.S. at 673 n.42; *Opperman*, 428 U.S. at 370 n.5. A school search is the paradigm of the noncriminal investigation. School officials are not charged with enforcement of the criminal laws, and they do not conduct searches for that purpose. Rather, their purpose is to maintain an institutional environment that facilitates learning. In a very real sense, moreover, a school official who conducts a search in order to preserve school safety and order, for the sake of maintaining an atmosphere conducive to education, does so as a surrogate for the student's parents. Saddling searches by school officials with all the

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[9] *In re Donaldson*, 269 Cal. App. 2d 509, 75 Cal. Rptr. 220 (1969), appears to be the earliest case on the issue.

trappings of criminal proceedings would seriously weaken the officials' ability to fulfill the important and sensitive mission with which society has entrusted them.

We have previously noted the importance of the doctrine that teachers act *in loco parentis* as the historical foundation for relations between students and teachers. See pages 17-18, *supra*. In its pure, traditional version, authority to act *in loco parentis* is authority actually delegated to the teacher by the parent. See 1 W. Blackstone, *Commentaries* *453. Applied in this manner, courts have held that the Fourth Amendment no more restricts the teacher than it does the parent. See, *e.g.*, *Mercer* v. *State*, 450 S.W.2d 715, 717 (Tex. Civ. App. 1970); *In re Donaldson*, 269 Cal. App. 2d 509, 510-513, 75 Cal. Rptr. 220, 221-223 (1969); 1 W. Ringel, *supra*, § 17.2, at 17-3.

Interpreted as an actual delegation of authority, the doctrine of *in loco parentis* does not fit easily within a compulsory system of education. See 1 W. Ringel, *supra*, § 17.2, at 17-5; Proehl, *supra*, 12 Vand. L. Rev. at 726-727. As numerous state courts have held, however, the doctrine is subject to a different interpretation that makes it a weighty factor in judging the reasonableness of actions of school officials. See, *e.g.*, *In re W.*, 29 Cal. App. 3d 777, 782, 105 Cal. Rptr. 775, 778 (1973); *People* v. *Jackson*, 65 Misc. 2d 909, 910, 914, 319 N.Y.S.2d 731, 733, 736 (Sup. Ct. 1971), aff'd, 30 N.Y.2d 734, 284 N.E.2d 153, 333 N.Y.S.2d 167 (1972); 1 W. Ringel, *supra*, § 17.2, at 17-6 n.17 (citing cases). The public school official acts *in loco parentis* in the sense that he assumes considerable responsibility for the welfare of his students. This Court recently noted that "juveniles, unlike adults, are always in some form of custody." *Schall* v. *Martin*, No. 82-1248 (June 4, 1984), slip op. 11. During school hours, this custody is committed to teachers and school officials. Along with custody, the teacher is charged with numerous affirmative obligations. Indeed, the responsibilities assumed by teachers, not merely to protect, but to socialize, educate, and foster moral development, are little short of awesome. Whether or not

delegated in the traditional, common law sense, the nature of the teacher's actual functions is undeniably "*in loco parentis*." It is in this sense that the *in loco parentis* doctrine retains vitality in the context of an inquiry into "reasonableness" for Fourth Amendment purposes. Interposing the full complement of Fourth Amendment procedural requirements between a teacher and his students can only frustrate the teacher's ability to fulfill his role. We believe, in other words, that having been given responsibilities *like* those of a parent, leeway must be given to teachers to exercise authority in a manner that might not be permitted of other state officials.[10]

While teachers are much more than "caretakers," the rationale of the "community caretaking" cases is especially apt here. A search by one with custody and control over the object searched may be permitted on the basis of less than probable cause because the additional responsibility associated with custody makes the search a reasonable course of action. See *Cady* v. *Dombrowski*, 413 U.S. at 442-443. This lowered threshold is reasonable in light of the nonadversarial nature of the relationship

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[10] The responsibility placed on school officials for the protection and well-being of students also supports the conclusion that students' reasonable expectations of privacy are substantially diminished while they are at school. The Fourth Amendment standard of reasonableness varies significantly depending upon the location of a search. It is true that "the Fourth Amendment protects people, not places." *Katz* v. *United States*, 389 U.S. 347, 351 (1967). But it is equally true that a person's reasonable expectations of privacy vary greatly depending upon his location. See, *e.g.*, *Hudson* v. *Palmer*, No. 82-1630 (July 3, 1984) (lowered expectation of privacy in prison); *Donovan* v. *Dewey*, 452 U.S. at 598-599 ("expectation of privacy that the owner of commercial property enjoys in such property differs significantly from the sanctity accorded an individual's home"); *United States* v. *Ramsey*, 431 U.S. at 619-621 (border search is permissible on less than probable cause simply because it is at the border); *Opperman*, 428 U.S. at 367 (footnote omitted) ("the expectation of privacy with respect to one's automobile is significantly less than that relating to one's home or office"). So too, the legitimate privacy expectations of a secondary school student *at school* are different from those the student may have on the street.

and the underlying purpose of protecting the interests of a larger group to whom the official conducting the search is responsible. Thus, in *Cady* v. *Dombrowski*, *supra*, the Court approved the search (without any suspicion of wrongdoing) of a car by police who were motivated by concern that the driver, an off-duty police officer, had left his service revolver in the car. The Court concluded that a search is reasonable without a warrant or probable cause when officers, responsible for and concerned with the public safety, conduct a search pursuant to such "community caretaking functions" (as distinguished from responsibility for "the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute"). *Id.* at 441-443. The analogous custody and responsibility of school officials for preserving order and discipline for students compels a similarly lowered threshold of suspicion for a search in the secondary school context.

As the Court has recognized, "[e]vents calling for discipline [in the public schools] are frequent occurrences and sometimes require immediate, effective action." *Goss* v. *Lopez*, 419 U.S. at 580. Unfortunately, that statement is more true today than ever before. There can be no gainsaying the importance of discipline to learning and educational achievement. See pages 23-24, *infra*. What may not be fully understood, however, is the extent to which the disorder in the nation's public schools now transcends the traditional difficulties of focusing a child's attention on learning. In 1978, the National Institute of Education (NIE), an agency of the Department of Education, reported that *each month* in America's secondary schools 282,000 students were physically attacked; 112,000 students were robbed by means of force, weapons, or threats; and 2,400,000 students had their personal property stolen. NIE, U.S. Dep't of Education, 1 *Violent Schools—Safe Schools: The Safe School Study Report to the Congress* iii, 74-75 (1978) [hereinafter cited as *NIE Report*]. NIE also reported that almost 8% of urban junior and senior high school students

missed at least one day of school a month because they were afraid to go to school. *Id.* at 63.

With respect to secondary school disorder affecting teachers, NIE reported that each month 6,000 teachers were robbed; 1,000 teachers were assaulted seriously enough to require medical attention; 125,000 teachers were threatened with physical harm; and 125,000 teachers encountered at least one situation in which they were afraid to confront misbehaving students. *NIE Report* 64, 75.

These findings vividly illustrate the setting in which school searches, like the one in this case, are conducted. The sad truth is that many classrooms across the country are not temples of learning teaching the lessons of good will, civility, and wisdom that are central to the fabric of American life. To the contrary, many schools are in such a state of disorder that not only is the educational atmosphere polluted, but the very safety of students and teachers is imperiled. School searches—conducted in a prompt and informal way—are a vital means of protecting students and teachers from weapons and drugs and enforcing school disciplinary rules.

In addition to maintaining order for safety's sake, teachers must be able to teach. There is persuasive evidence that educational achievement in this country has undergone a serious decline in recent years. See generally National Comm'n on Excellence in Education, *A Nation At Risk: The Imperative For Educational Reform* (1983). In response to this decline, educators have identified as a major priority the need to reestablish discipline and end drug and alcohol abuse in the schools. As one recent study concluded (J. Coleman, T. Hoffer, & S. Kilgore, *High School Achievement—Public, Catholic, and Private Schools Compared* 186-187 (1982) (emphasis added)):

> When study of the effects of school characteristics on achievement began on a broad scale in the 1960s, those characteristics that were most studied were the traditional ones * * *: per pupil expenditures as an overall measure of resources, laboratory facili-

> ties, libraries, recency of textbooks, and breadth of course offerings. Those characteristics showed little or no consistent relation to achievement. *The characteristics of schools that are currently found to be related to achievement, in this study and others* * * *, *are academic demands and discipline.*

The "discipline" meted out by the criminal justice system, however, may be counterproductive in the secondary school context and is likely to undermine the best features of the teacher/student relationship. Although the ideal may not always be attainable, educators must strive to create an atmosphere of trust and friendship between students and school officials. "[E]motion enters the classroom via the teacher-child relationship. * * * Children develop strong attachments to teachers, as well as certain kinds of dependencies. The success of the teaching-learning process may depend, in part, on the nature of the emotional relationship between teacher and student." 2 *Encyclopedia of Educational Research* 558 (5th ed. 1982). Imposition of the formalities of the criminal law enforcement process on what should instead be "informal give-and-take between student and disciplinarian" (*Goss* v. *Lopez*, 419 U.S. at 584) can only be destructive of the educational ideal. See also *Wyman* v. *James*, 400 U.S. at 323 ("The [welfare] caseworker is not a sleuth but rather, we trust, is a friend to one in need.").[11]

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[11] A somewhat imperfect analogy may be drawn to the relationship between parole officers and parolees, a relationship that has led several courts to alter the degree of protection from searches and seizures ordinarily provided by the Fourth Amendment. In *Morrissey* v. *Brewer*, 408 U.S. 471, 478 (1972) (footnote omitted), this Court observed that "parole officers are part of the administrative system designed * * * to guide the parolee into constructive development." In recognition of this relationship, several courts of appeals have held that "parole officers have * * * broad powers to search parolees under their supervision." *Latta* v. *Fitzharris*, 521 F.2d 246, 248 (9th Cir.) (en banc), cert. denied, 423 U.S. 897 (1975). See *United States* v. *Thomas*, 729 F.2d 120 (2d Cir. 1984); *United States* v. *Scott*, 678 F.2d 32 (5th Cir. 1982); *United States* v. *Bradley*, 571 F.2d 787 (4th Cir. 1978). In language particularly apropos to this case, the Second Circuit explained the rationale behind this extra authority (*Thomas*, 729 F.2d at 123 (emphasis added)):

> A parolee's diminished Fourth Amendment protection regarding searches by a parole officer *arises from the necessity for effective parole supervision and the unique relationship of the parole officer and the parolee.* * * * A parolee is in the legal custody of a parole officer who monitors the parolee's adherence to the conditions of his or her parole.

See also *Scott*, 678 F.2d at 34 ("As the official primarily charged * * * with guiding the parolee during his reorientation," greater latitude in searching is permitted to the parole officer); *Latta*, 521 F.2d at 249 ("The purposes of the parole system give the parole authorities a special and unique interest in invading the privacy of parolees under their supervision.").

Finally, a relaxed level of suspicion for searches by school officials also is justified by the intense public scrutiny focused on the public schools. As the Court noted in *Ingraham* v. *Wright*, 430 U.S. at 670, "[t]he openness of the public school and its supervision by the community afford significant safeguards against the kinds of abuses from which the Eighth Amendment protects the prisoner." So too, the same factors make unreasonable searches of students' effects much less likely than may be the case with adults suspected of criminal activity. In the case of adults, the public at large is unlikely to be informed or especially concerned about possible abuses, and those individuals who are informed may not be in a position to exert pressure on the responsible authorities. In the case of school children, by contrast, a large and highly motivated segment of the public—parents with school-age children—is immediately aware of abuses, can effectively protest practices it regards as unreasonable, and—acting through local school boards—can hold teachers and administrators accountable. Given the availability of these effective political safeguards, there is no need for the judiciary to impose rigid constraints on school officials in their day-to-day work.

For all these reasons, therefore, the school context is one in which no more than reasonable suspicion that a

rule is being violated should be necessary to support a search by a school official acting in that capacity.

III. The Assistant Vice Principal's Search Of Respondent's Purse In This Case Was Justified By Reasonable Suspicion

School officials possess the requisite "reasonable suspicion" to search a student's effects when "they are aware of specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion" that the student has violated a school rule. *Brignoni-Ponce*, 422 U.S. at 884. That standard clearly was met in this case. The assistant vice principal received an eyewitness report from an unquestionably credible source (a teacher) that respondent had violated a school regulation by smoking in the restroom. Respondent's denial, and her claim that she was a non-smoker, were hardly sufficient, without more, to overcome the reasonable suspicion generated by the teacher's report. Opening respondent's purse to determine whether its contents might reveal the truth of the mattter in dispute was surely reasonable under the circumstances.[12]

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[12] Moreover, the record reveals that Mr. Choplick acted out of concern for fairness to respondent (9/26/80 Tr. 30-31):

> Q. * * * What was your sole intention when you opened that pocketbook?
>
> A. The intent that I've always tried to do is that whenever I'm going to discipline anyone I try to give them a hearing, which I thought was part of my responsibility. I just don't normally hand out punishment.
>
> * * * * *
>
> A. When she said to me she wasn't smoking, all right, that was to me to see if there was any proof that she was. I didn't have a teacher there, and so my intent was to see if there was cigarettes inside, which would be a sign to me that she was smoking.
>
> Q. Had you not found the cigarettes what would you have done?
>
> A. I probably would have called back [the teacher] and asked her had she definitely saw her smoking.

It thus appears that Mr. Choplick was engaged in much the sort of "informal give-and-take between student and disciplinarian"

The New Jersey court erroneously characterized the assistant vice principal's reasonable suspicion as "at best, a good hunch" (Pet. App. 12a). But the teacher's eyewitness report that respondent had been smoking, coupled with the rational inference that a person who has recently been smoking is likely to possess additional cigarettes, amounted to far more than "a good hunch."[13] The Supreme Court of New Jersey thus plainly erred when it stated that "[t]he contents of the handbag had no direct bearing on the infraction" (*ibid.*). The court apparently based its holding on the ground that "[m]ere possession of cigarettes did not violate school rule or policy" (*ibid.*), thus suggesting that the validity of the

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mandated by this Court in *Goss* v. *Lopez*, 419 U.S. at 584. Clearly, he was acting as "a fair-minded school principal" (*id.* at 583) in order to avoid the unwarranted imposition of disciplinary sanctions. Respondent contends that Mr. Choplick should have disciplined respondent without opening her purse (see Tr. of Oral Arg. 43-44 (Mar. 28, 1984)), but we question the educative value of a lesson that teaches that students are always to be disbelieved.

[13] In the trial court, respondent's counsel conceded that it was reasonable for the assistant vice principal to open respondent's purse (9/26/80 Tr. 55-56 (emphasis added)):

> What were the reasonabl[e] action[s] that Mr. Choplick should have taken? Here's the way I see it, your Honor, in this regard: T. went into Mrs., Miss Wrighley's office, she was asked to turn over her pocketbook. As soon as the pocketbook was unzippered lo and behold, sitting up on top was a pack of Marlboro cigarettes. *That was enough. He should never have removed those cigarettes. No reason to delve around in that pocketbook beyond that point and everything that happened thereafter was improper, beyond the scope of the search. The suspicion was smoking. There was a denial of smoking. The purpose of the search was to see if there was some kind of smoking apparatus * * * and that was enough.*
>
> *They [the cigarettes] should never have been removed.*

In our submission, it borders on the absurd to contend that, while it was reasonable to open respondent's purse, Mr. Choplick violated the Constitution when he lifted the Marlboros out to confront her with them. And, as we discuss in text, once the Marlboros had been removed, Mr. Choplick acquired probable cause (not merely reasonable suspicion) for a complete search of respondent's purse.

search depended on whether its object was the discovery of contraband. It thus appears that the state court has revived some version of the "mere evidence" rule rejected by this Court in *Warden* v. *Hayden*, 387 U.S. 294, 300-310 (1967).[14] That the possession of cigarettes did not violate any school rule is, however, irrelevant; the controlling question is whether respondent's possession of cigarettes would aid in establishing a violation of the prohibition against smoking in the restrooms. *Id.* at 307. The answer to that question is clearly affirmative. Moreover, it was not necessary that the assistant vice principal search only for evidence that would have established a violation conclusively.[15] Quite clearly, the contents of respondent's purse could reasonably have been believed by the assistant vice principal to have a bearing on the credibility of respondent's assertion that she did not smoke and, hence, on the credibility of her denial of having committed the infraction.

The New Jersey court also erred in its suggestion (Pet. App. 12a) that even if it was reasonable for the assistant vice principal to have opened respondent's purse, the balance of the search was unreasonable. While acknowledging that the sight of rolling papers in plain view could justify looking for drugs, the court went on to state that observation of the rolling papers could not

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[14] Of course, even when the "mere evidence" rule held sway, it was permissible to search not only for contraband but for fruits and instrumentalities of an offense. See *Warden* v. *Hayden*, 387 U.S. at 300-301. It seems likely that the cigarettes in respondent's purse would be classified as instrumentalities of the smoking infraction.

[15] See, *e.g.*, *United States* v. *Holland*, 510 F.2d 453, 455 (9th Cir.), cert. denied, 422 U.S. 1010 (1975) (footnote omitted), in which the court stated:

> Clearly, the officers were not required to rule out all possibility of innocent behavior before initiating a brief stop and request for identification. The test is founded suspicion * * *. Even if it was equally probable that the vehicle or its occupants were innocent of any wrongdoing, police officers must be permitted to act *before* their reasonable belief is verified by escape or fruition of the harm it was their duty to prevent.

justify "'wholesale rummaging or browsing through a person's papers in the unparticularized hope of uncovering evidence of a crime.'" *Ibid.* (quoting *State* v. *Smith*, 113 N.J. Super. 120, 135, 273 A.2d 68, 76-77 (1971)). But the search of respondent's purse cannot be compartmentalized any more than the search of an automobile. See, *e.g.*, *United States* v. *Ross*, 456 U.S. at 820-821. Once the assistant vice principal saw the rolling papers, he had probable cause (not merely reasonable suspicion) to believe that respondent possessed marijuana, and he was justified in searching her entire purse for evidence of drug dealing.

If, as the New Jersey court in essence held, school officials lack reasonable grounds to conduct a search when a student simply denies a teacher's eyewitness account of an infraction, students will deny such charges routinely. The result will be the same as if the Court adopted a probable cause standard for school searches; as we have shown above, that standard is wholly inappropriate in the school context.

CONCLUSION

The judgment of the Supreme Court of New Jersey should be reversed.

Respectfully submitted.

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